

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY MARCH 25, 2010

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL

No. 2685

Introduced by Assembly Member De La Torre

February 19, 2010

~~An act to amend Sections 1006, 35107, 44237, 44346.1, and 44424 of, and to add Sections 44021 and 47610.2 to, the Education Code, relating to schools, and declaring the urgency thereof, to take effect immediately. An act to add Section 47610.2 to the Education Code, relating to charter schools.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 2685, as amended, De La Torre. ~~Schools: Charter schools: criminal background of employees and board members~~ *volunteers.*

Existing law permits the governing board of a school district to authorize any person, except a person required to register as a sex offender, to serve as a nonteaching volunteer aide, as defined, and to perform certain duties that include supervising pupils. Existing law authorizes certain local educational agencies and private schools to request a local law enforcement agency to conduct a records check of a prospective nonteaching volunteer aid to ascertain whether the person has been convicted of a sex offense, and further authorizes those entities to request subsequent arrest notification service from the Department of Justice for prospective volunteers, as specified.

Existing law prohibits the governing board of a school district from employing persons in public school service who have been convicted of specified sex offenses or controlled substance offenses, and further

prohibits a person who has been convicted of a violent or serious felony, as defined, from being employed by a school district, except as specified.

Existing law requires the governing board of a school district to comply with specified requirements relating to the criminal histories and records of employees and applicants for employment, including transmitting an applicant's fingerprint cards to the Department of Justice to ascertain whether the applicant has been arrested or convicted of any crime. Existing law, on and after July 1, 2010, requires all noncertificated candidates for a paid or volunteer position to supervise, direct, or coach a pupil activity program sponsored by or affiliated with a school district to obtain an Activity Supervisor Clearance Certificate from the Commission on Teacher Credentialing.

This bill would require a charter school to comply with all of those provisions.

~~(1) Under existing law, any registered voter is eligible to be a member of the county board of education, except as specified. Existing law also authorizes any person who is 18 years of age or older, who is a resident of the school district, and who meets other specified requirements to be elected or appointed to the governing board of a school district.~~

~~This bill would require a person who is elected, appointed, or is otherwise selected to serve on those boards to successfully complete a criminal background check, as specified, prior to taking office. By imposing additional requirements on local educational agencies, the bill would impose a state-mandated local program.~~

~~(2) Existing law requires every person, firm, association, partnership, or corporation offering or conducting private school instruction on the elementary or high school level to conduct a criminal background check with the Department of Justice for each applicant for employment in a position that requires contact with minor pupils, if the applicant is not credentialed by the Commission on Teacher Credentialing or licensed by another state agency that requires a criminal background check.~~

~~This bill would require a private school to notify the Commission on Teacher Credentialing whenever an employee who comes in contact with minor pupils in the course of his or her employment is charged with the commission of any sex offense, as defined.~~

~~The bill would require a person serving as an administrator of a charter school or as a member of the governing board of a charter school to successfully complete a criminal background check.~~

~~The bill would require the commission, with the assistance of the Department of Justice, to establish and maintain a database of all persons~~

who do not possess a valid credential issued by the commission, who are or were employed by a private school in a position requiring contact with minor pupils, and who have been arrested or convicted of a sex offense.

(3) Existing law authorizes the commission to grant a credential to an applicant who has been convicted of a violent or serious felony if he or she obtains a certificate of rehabilitation and pardon pursuant to specified statutory provisions, and specifies that the commission is prohibited from revoking the credential of a holder solely on the basis that the applicant has been convicted of a violent or serious felony if he or she obtains a certificate of rehabilitation and pardon.

This bill would exclude from those provisions credentialholders and applicants who have been convicted of specified criminal offenses.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$ -majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes-no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1006 of the Education Code is amended
2 to read:
3 1006. (a) Any registered voter is eligible to be a member of
4 the county board of education except the county superintendent
5 of schools, any member of his staff, or any employee of a school
6 district.
7 (b) Notwithstanding any other provision of law, the county
8 board of education may adopt or the residents of the county may
9 propose, by initiative, a proposal to limit or repeal a limit on the
10 number of terms a member of the county board of education may
11 serve on the county board of education. Any proposal to limit the
12 number of terms a member of the county board of education may
13 serve on the county board of education shall apply prospectively

1 only and shall not become operative unless it is submitted to the
2 electors of the county at a regularly scheduled election and a
3 majority of the votes cast on the question favor the adoption of the
4 proposal.

5 (e) An initiative measure proposed pursuant to subdivision (b)
6 shall be subject to the procedures set forth in Chapter 2
7 (commencing with Section 9100) of Division 9 of the Elections
8 Code.

9 (d) Notwithstanding any other law, prior to taking office, a
10 person elected, appointed, or otherwise selected to serve on a
11 county board of education shall successfully complete a criminal
12 background check in accordance with Section 45125 prior to taking
13 office.

14 SEC. 2. Section 35107 of the Education Code is amended to
15 read:

16 35107. (a) Any person, regardless of sex, who is 18 years of
17 age or older, a citizen of the state, a resident of the school district,
18 a registered voter, and who is not disqualified by the Constitution
19 or laws of the state from holding a civil office, is eligible to be
20 elected or appointed a member of a governing board of a school
21 district without further qualifications.

22 (b) (1) An employee of a school district may not be sworn into
23 office as an elected or appointed member of that school district's
24 governing board unless and until he or she resigns as an employee.
25 If the employee does not resign, the employment will automatically
26 terminate upon being sworn into office.

27 (2) For any individual who is an employee of a school district
28 and an elected or appointed member of that school district's
29 governing board prior to January 1, 1992, this subdivision shall
30 apply when he or she is reelected or reappointed, on or after
31 January 1, 1992, as a member of the school district's governing
32 board.

33 (c) Notwithstanding any other law, the governing board of a
34 school district may adopt or the residents of the school district may
35 propose, by initiative, a proposal to limit or repeal a limit on the
36 number of terms a member of the governing board of the school
37 district may serve on the governing board of the school district.
38 Any proposal to limit the number of terms a member of the
39 governing board of the school district may serve on the governing
40 board of the school district shall apply prospectively only and shall

1 not become operative unless it is submitted to the electors of the
2 school district at a regularly scheduled election and a majority of
3 the votes cast on the question favor the adoption of the proposal.

4 (d) (1) An initiative measure proposed pursuant to subdivision
5 (e) shall be subject to the procedures set forth in Chapter 4
6 (commencing with Section 9300) of Division 9 of the Elections
7 Code.

8 (2) A proposal submitted to the electors by the governing board
9 pursuant to subdivision (c) shall be subject to the procedures set
10 forth in Chapter 6 (commencing with Section 9500) of Division
11 9 of the Elections Code.

12 (e) A member of the governing board of a school district shall
13 abstain from voting on personnel matters that uniquely affect a
14 relative of the member but may vote on collective bargaining
15 agreements and personnel matters that affect a class of employees
16 to which the relative belongs. For purposes of this section,
17 “relative” means an adult who is related to the person by blood or
18 affinity within the third degree, as determined by the common law,
19 or an individual in an adoptive relationship within the third degree.

20 (f) Notwithstanding any other law, a person elected, appointed,
21 or otherwise selected to serve on a governing board of a school
22 district shall successfully complete a criminal background check
23 in accordance with Section 45125 prior to taking office.

24 SEC. 3. Section 44021 is added to the Education Code, to read:

25 44021. (a) A private school shall notify the Commission on
26 Teacher Credentialing whenever an employee who comes in
27 contact with minor pupils in the course of his or her employment
28 is charged with the commission of any sex offense, as defined in
29 Section 44010, no later than 10 days after being informed that the
30 employee has been charged.

31 (b) For purposes of this section, “private school” means any
32 person, firm, association, partnership, or corporation offering or
33 conducting private school instruction on the elementary or high
34 school level.

35 SEC. 4. Section 44237 of the Education Code is amended to
36 read:

37 44237. (a) Every person, firm, association, partnership, or
38 corporation offering or conducting private school instruction on
39 the elementary or high school level shall require each applicant
40 for employment in a position requiring contact with minor pupils

1 who does not possess a valid credential issued by the Commission
2 on Teacher Credentialing or is not currently licensed by another
3 state agency that requires a criminal record summary that directly
4 relates to services provided in a facility described in this section
5 and has background clearance criteria that meets or exceeds the
6 requirements of this section, to submit two sets of fingerprints
7 prepared for submittal by the employer to the Department of Justice
8 for the purpose of obtaining criminal record summary information
9 from the Department of Justice and the Federal Bureau of
10 Investigation.

11 (b) (1) As used in this section, “employer” means every person,
12 firm, association, partnership, or corporation offering or conducting
13 private school instruction on the elementary or high school level.

14 (2) As use in this section, “employment” means the act of
15 engaging the services of a person, who will have contact with
16 pupils, to work in a position at a private school at the elementary
17 or high school level on or after September 30, 1997, on a regular,
18 paid full-time basis, regular, paid part-time basis or paid full- or
19 part-time seasonal basis.

20 (3) As used in this section, “applicant” means any person who
21 is seriously being considered for employment by an employer.

22 (4) This section does not apply to a secondary school pupil
23 working at the school he or she attends or a parent or legal guardian
24 working exclusively with his or her children.

25 (c) (1) Upon receiving the identification cards, the Department
26 of Justice shall ascertain whether the applicant has been arrested
27 or convicted of any crime insofar as that fact can be ascertained
28 from information available to the department and forward the
29 information to the employer submitting the fingerprints no more
30 than 15 working days after receiving the identification cards. The
31 Department of Justice shall not forward information regarding
32 criminal proceedings that did not result in a conviction but shall
33 forward information on arrests pending adjudication.

34 (2) Upon implementation of an electronic fingerprinting system
35 with terminals located statewide and managed by the Department
36 of Justice, the Department of Justice shall ascertain the information
37 required pursuant to this subdivision within three working days.
38 If the Department of Justice cannot ascertain the information
39 required pursuant to this subdivision within three working days,
40 the department shall notify the employer submitting the fingerprints

1 ~~that it cannot so ascertain the required information. This~~
2 ~~notification shall be delivered by telephone or electronic mail to~~
3 ~~the employer submitting the fingerprints. If the employer~~
4 ~~submitting the fingerprints is notified by the Department of Justice~~
5 ~~that it cannot ascertain the required information about a person,~~
6 ~~the employer shall not employ that person until the Department~~
7 ~~of Justice ascertains that information.~~

8 ~~(3) The Department of Justice shall review the criminal record~~
9 ~~summary it obtains from the Federal Bureau of Investigation to~~
10 ~~ascertain whether an applicant for employment has a conviction,~~
11 ~~or an arrest pending final adjudication, for any sex offense,~~
12 ~~controlled substance offense, crime of violence, or serious or~~
13 ~~violent felony. The Department of Justice shall provide written~~
14 ~~notification to the private school employer only as to whether an~~
15 ~~applicant for employment has any convictions, or arrests pending~~
16 ~~final adjudication, for any of these crimes.~~

17 ~~(d) An employer shall not employ a person until the Department~~
18 ~~of Justice completes its check of the state criminal history file as~~
19 ~~set forth in this section.~~

20 ~~(e) (1) A person, firm, association, partnership, or corporation~~
21 ~~offering or conducting private school instruction on the elementary~~
22 ~~or high school level shall not employ a person who has been~~
23 ~~convicted of a violent or serious felony or a person who would be~~
24 ~~prohibited from employment by a public school district pursuant~~
25 ~~to any provision of this code because of his or her conviction for~~
26 ~~any crime.~~

27 ~~(2) A person who would be prohibited from employment by a~~
28 ~~private school pursuant to paragraph (1) shall not, on or after July~~
29 ~~1, 1999, own or operate a private school offering instruction on~~
30 ~~the elementary or high school level.~~

31 ~~(f) An employer shall request subsequent arrest service from~~
32 ~~the Department of Justice as provided under Section 11105.2 of~~
33 ~~the Penal Code.~~

34 ~~(g) This section applies to any violent or serious offense which,~~
35 ~~if committed in this state, would have been punishable as a violent~~
36 ~~or serious felony.~~

37 ~~(h) For purposes of this section, a violent felony is any felony~~
38 ~~listed in subdivision (c) of Section 667.5 of the Penal Code and a~~
39 ~~serious felony is any felony listed in subdivision (c) of Section~~
40 ~~1192.7 of the Penal Code.~~

1 (i) ~~Notwithstanding subdivision (e), a person shall not be denied~~
2 ~~employment or terminated from employment solely on the basis~~
3 ~~that the person has been convicted of a violent or serious felony~~
4 ~~if the person has obtained a certificate of rehabilitation and pardon~~
5 ~~pursuant to Chapter 3.5 (commencing with Section 4852.01) of~~
6 ~~Title 6 of Part 3 of the Penal Code.~~

7 (j) ~~Notwithstanding subdivision (e), a person shall not be denied~~
8 ~~employment or terminated from employment solely on the basis~~
9 ~~that the person has been convicted of a serious felony that is not~~
10 ~~also a violent felony if that person can prove to the sentencing~~
11 ~~court of the offense in question, by clear and convincing evidence,~~
12 ~~that he or she has been rehabilitated for the purposes of school~~
13 ~~employment for at least one year. If the offense in question~~
14 ~~occurred outside this state, then the person may seek a finding of~~
15 ~~rehabilitation from the court in the county in which he or she is a~~
16 ~~resident.~~

17 (k) ~~The Commission on Teacher Credentialing shall send on a~~
18 ~~monthly basis to each private school a list of all teachers who have~~
19 ~~had their state teaching credential revoked or suspended. The list~~
20 ~~shall be identical to the list compiled for public schools in the state.~~
21 ~~The commission shall also send on a quarterly basis a complete~~
22 ~~and updated list of all teachers who have had their teaching~~
23 ~~credentials revoked or suspended, excluding teachers who have~~
24 ~~had their credentials reinstated, or who are deceased.~~

25 (l) ~~The Department of Justice may charge a reasonable fee to~~
26 ~~cover costs associated with the processing, reviewing, and~~
27 ~~supplying of the criminal record summary as required by this~~
28 ~~section. The fee shall not exceed the actual costs incurred by the~~
29 ~~department.~~

30 (m) ~~Where reasonable access to the statewide, electronic~~
31 ~~fingerprinting network is available, the Department of Justice may~~
32 ~~mandate electronic submission of the fingerprints and related~~
33 ~~information required by this section.~~

34 (n) ~~All information obtained from the Department of Justice is~~
35 ~~confidential. Agencies handling Department of Justice information~~
36 ~~shall ensure the following:~~

37 (1) ~~A recipient shall not disclose its contents or provide copies~~
38 ~~of information.~~

1 ~~(2) Information received shall be stored in a locked file separate~~
2 ~~from other files, and shall only be accessible to the custodian of~~
3 ~~records.~~

4 ~~(3) Information received shall be destroyed upon the hiring~~
5 ~~determination in accordance with subdivision (a) of Section 708~~
6 ~~of Title 11 of the California Code of Regulations.~~

7 ~~(4) Compliance with destruction, storage, dissemination,~~
8 ~~auditing, backgrounding, and training requirements as set forth in~~
9 ~~Sections 700 to 708, inclusive, of Title 11 of the California Code~~
10 ~~of Regulations and Section 11077 of Penal Code governing the~~
11 ~~use and security of criminal offender record information is the~~
12 ~~responsibility of the entity receiving the information from the~~
13 ~~Department of Justice.~~

14 ~~(o) The Commission on Teacher Credentialing shall establish~~
15 ~~and maintain a database of all persons who do not possess a valid~~
16 ~~credential issued by the commission, who are or were employed~~
17 ~~by a private school in a position requiring contact with minor~~
18 ~~pupils, and who have been arrested or convicted of a sex offense,~~
19 ~~as defined in Section 44010. The database shall include, among~~
20 ~~other information, the name and address of the private school at~~
21 ~~which the person is or was employed. The Department of Justice~~
22 ~~shall assist the commission in establishing and maintaining the~~
23 ~~database.~~

24 ~~SEC. 5. Section 44346.1 of the Education Code is amended to~~
25 ~~read:~~

26 ~~44346.1. (a) The commission shall deny any application for~~
27 ~~the issuance of a credential made by an applicant who has been~~
28 ~~convicted of a violent or serious felony or a crime set forth in~~
29 ~~subdivision (a) of Section 44424 or whose employment has been~~
30 ~~denied or terminated pursuant to Section 44830.1.~~

31 ~~(b) This section applies to any violent or serious offense which,~~
32 ~~if committed in this state, would have been punishable as a violent~~
33 ~~or serious felony.~~

34 ~~(c) For purposes of this section, a violent felony is any felony~~
35 ~~listed in subdivision (c) of Section 667.5 of the Penal Code and a~~
36 ~~serious felony is any felony listed in subdivision (c) of Section~~
37 ~~1192.7 of the Penal Code.~~

38 ~~(d) Notwithstanding subdivision (a), the commission may, but~~
39 ~~is not required to, grant a credential to an applicant who has been~~
40 ~~convicted of a violent or serious felony, except for an offense~~

1 defined in Section 273a, 273ab, or 278 of the Penal Code, if the
2 person is eligible for, and has obtained, a certificate of
3 rehabilitation and pardon pursuant to Chapter 3.5 (commencing
4 with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

5 SEC. 6. Section 44424 of the Education Code is amended to
6 read:

7 44424. (a) Upon the conviction of the holder of any credential
8 issued by the State Board of Education or the Commission on
9 Teacher Credentialing of a violation, or attempted violation, of a
10 violent or serious felony as described in Section 44346.1, or any
11 one or more of Penal Code Sections 187 to 191, inclusive, 192
12 insofar as this section relates to voluntary manslaughter, 193, 194
13 to 217.1, inclusive, 220, 222, 244, 245, 261 to 267, inclusive, 273a,
14 273ab, 273d, 273f, 273g, 278, 285 to 288a, inclusive, 424, 425,
15 484 to 488, inclusive, insofar as these sections relate to felony
16 convictions, 503 and 504, or of any offense involving lewd and
17 lascivious conduct under Section 272 of the Penal Code, or any
18 offense committed or attempted in any other state or against the
19 laws of the United States which, if committed or attempted in this
20 state, would have been punished as one or more of the offenses
21 specified in this section, becoming final, the commission shall
22 forthwith revoke the credential.

23 (b) Upon a plea of nolo contendere as a misdemeanor to one or
24 more of the crimes set forth in subdivision (a), all credentials held
25 by the respondent shall be suspended until a final disposition
26 regarding those credentials is made by the commission. Any action
27 that the commission is permitted to take following a conviction
28 may be taken after the time for appeal has elapsed, or the judgment
29 of conviction has been affirmed on appeal, or when an order
30 granting probation is made suspending the imposition of sentence
31 and the time for appeal has elapsed or the judgment of conviction
32 has been affirmed on appeal, irrespective of a subsequent order
33 under the provisions of Section 1203.4 of the Penal Code.

34 (c) The commission shall revoke a credential issued to a person
35 whose employment has been denied or terminated pursuant to
36 Section 44830.1.

37 (d) Notwithstanding subdivision (a), the commission may, but
38 is not required to, revoke the credential of a holder who has been
39 convicted of a violent or serious felony, except for an offense
40 defined in Section 273a, 273ab, or 278 of the Penal Code, if the

1 ~~person has obtained a certificate of rehabilitation and pardon~~
2 ~~pursuant to Chapter 3.5 (commencing with Section 4852.01) of~~
3 ~~Title 6 of Part 3 of the Penal Code.~~

4 ~~SEC. 7.~~

5 *SECTION 1.* Section 47610.2 is added to the Education Code,
6 to read:

7 47610.2. (a) Notwithstanding any other provision of law, a
8 ~~person serving as an administrator of a charter school or as a~~
9 ~~member of a governing body of a charter school shall successfully~~
10 ~~complete a background check in accordance with Section 45125.~~
11 *charter school shall comply with Sections 35021, 35021.1, 35021.2,*
12 *44836, 45122.1, 45125, and 49024.*

13 (b) A person who is ~~an administrator or a member of a governing~~
14 ~~body of a charter school required to complete a background check~~
15 *pursuant to subdivision (a)* at the time the statute enacting this
16 section takes effect shall complete the background check within
17 90 days from the date on which this section takes effect.

18 ~~SEC. 8. If the Commission on State Mandates determines that~~
19 ~~this act contains costs mandated by the state, reimbursement to~~
20 ~~local agencies and school districts for those costs shall be made~~
21 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
22 ~~4 of Title 2 of the Government Code.~~

23 ~~SEC. 9. This act is an urgency statute necessary for the~~
24 ~~immediate preservation of the public peace, health, or safety within~~
25 ~~the meaning of Article IV of the Constitution and shall go into~~
26 ~~immediate effect. The facts constituting the necessity are:~~

27 ~~In order to protect the health and safety of children attending~~
28 ~~private schools, it is necessary that this act take effect immediately.~~